

(2010) 07 AHC CK 0447
In the Allahabad High Court
Case No : Writ A. No. 41124 of 2006

Smt. Pramila

APPELLANT

Vs

The Govt. of U.P. and Others

RESPONDENT

Date of Decision : 22-07-2010

Acts Referred:

Constitution of India, 1950 — Article 226
Criminal Procedure Code, 1973 (CrPC) — Section 125
Hindu Marriage Act, 1955 — Section 13

Citation : (2010) 07 AHC CK 0447

Hon'ble Judges : Anil Kumar, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Anil Kumar, J.—By means of the present writ petition, the Petitioner has challenged the order dated 8.7.2006 (Annexure No. 9) passed by the District Magistrate, Shahjahanpur (Respondent No. 2).

2. The facts, as submitted by the learned Counsel for the Petitioner, are that in the year 2006, an advertisement was issued inviting applications for appointment on the post of Shiksha Mitra in various primary schools situated in district Shajahanpur; one of the primary school for which the applications were invited by the said advertisement situate at Primary School Gram Panchayat Gadraul, Pargana Kant, Tehsil Sadar , District Shahjahanpur.

3. In pursuance to the said advertisement , Petitioner and other candidates submitted their candidature, thereafter a selection was held on the basis of which a merit list prepared, and as per version of the Petitioner, her name finds place at serial No. 1 . In spite of the said fact , she was not given appointment on the post in question whereas Km. Kuldeep Kaur (Respondent No. 4) has been appointed.

4. Aggrieved by the said facts, the Petitioner submitted a representation to the

Respondents No. 2 and 3 but not heed has been paid for redressal of her grievance as such she filed Writ Petition No. 25344 of 2006 before this Court, disposed of vide judgment and order dated 22.5.2006 with the following directions:

In view of the aforesaid , I dispose of the writ petition with a direction to the Petitioner to file an appropriate application before the District Magistrate concerned. If such an application is filed, the same shall be disposed of by the District Magistrate within one month from the date of production of the certified copy of this order after hearing all the affected parties.

5. In pursuance to the directions given by this Court vide order dated 22.5.2006, the District Magistrate, Shahjahanpur passed the impugned order dated 8.7.2006 thereby rejecting the Petitioner's representation, hence the present writ petition.

6. Learned Counsel for the Petitioner while assailing the impugned order submits that the action on the part of the Respondent No. 2 thereby rejecting the Petitioner's representation is illegal and arbitrary as the reason given therein for rejecting the same is not correct because the Petitioner, who is married with one Sri Harish Chandra but after her marriage , the relations between the Petitioner and her husband were not cordial as she was beaten by her husband on the ground of demand of dowry and as her parents were unable to satisfy the said demand so her husband had turned her out from his house (Sasural) on 1.4.2004 . In this regard , an F.I.R. was lodged by her and the proceedings u/s 125 Code of Criminal Procedure is pending before Judicial Magistrate, Shahjahanpur. Since then the Petitioner is residing with her parents at village & post Sainjana, Blolck Gadraul Pargana Kant, Tehsil Sadar , District Shajahanpur where the school in question is situated . Accordingly the Petitioner is entitled for being appointed on the post in question so the order in question passed by the District Magistrate, is arbitrary in nature and liable to be set aside.

7. On the other hand , Sri Ashutosh Kumar Misra, learned Counsel for the Respondent No. 4 has submitted that the Petitioner is a married lady and not the resident of village & Post Sainjana, Blolck Gadraul Pargana Kant, Tehsil Sadar , District Shajahanpur where the Primary School is situated so she is not entitled for appointment on the post in question . He further submits that no Suit u/s 13 of the Hindu Marriage Act has been instituted for declaration of marriage null and void by any competent court of law, so the Petitioner is legally wedded wife of Sri Harish Chandra and the resident of Ekanjai (Gadiyana) Jalal Nagar Police Station Sadar Bazar , Shahjahanpur where her Sasural is situated so she is not entitled for any relief.

8. Sri Ram Prakash Shukla, learned Counsel appearing on behalf of Respondent No. 3, District Basic Education Officer, Shahjahanpur submits that the Petitioner was admittedly married with one Harish Chandra son of Tilak Ram resident of Ekanjai (Gadiyana) Jalal Nagar Police Station Sadar Bazar , Shahjahanpur District Shahjanpur on 25.5.2003 and in this regard complaints were also made

by other applicants and enquiry was also done there on and the said facts was found to be correct and the claim of Petitioner for appointed as Shiksha Mitra was rejected by the Tehsil Level Committee headed by S.D.M. Sardar Shahjahanpur on the ground that Petitioner is married and as such she is not resident of the Gram Panchayat in question, so the Petitioner is not entitled for any relief whatsoever and the present writ petition filed by her deserves to be dismissed.

9. I have heard the learned Counsel for the parties and perused the record.

10. Admitted facts of the present writ petition are that an advertisement was issued for appointment for the post of Shiksha Mitra at Primary School Sainjana, Bolck Gadraul Pargana Kant, Tehsil Sadar , District Shajahanpur and the Petitioner, Respondent No. 4 as well as other candidates submitted their candidature. Thereafter the selection was held and the Petitioner was placed at serial No. 1 in the merit list but her candidature was rejected on the ground that she was not the resident of village where the primary school in question is situated.

11. Aggrieved by the said action initially the Petitioner approached the authorities concerned, thereafter she approached this Court by filing Writ Petition No. 25344 of 2006 disposed of vide order dated 22.5.2006 with the directions that the District Magistrate concerned may decide the Petitioner's representation after hearing all the affected parties.

12. From the perusal of the impugned order dated 8.7.2006 passed by the District Magistrate, Shahjahanpur, it is evident that in pursuance of the order dated 22.5.2006 passed by this Court in Writ Petition No. 25344 of 2006, the District Magistrate by letter dated 12.6.2006 called a report from Additional Basic Shiksha Adhikari, Block Gadraul and also called the Petitioner as well as the Respondent No. 4 to submit their grievances. Moreover, from the record, it also transpires that Respondent No. 4 (Km. Kuldeep Kaur) appeared before District Magistrate, submit her version/ case, but the Petitioner did not appear before the District Magistrate .

13. Thereafter the District Magistrate after hearing the Respondent No. 4 Km. Kuldeep Kaur, taking into consideration the material evidence on record as well as the report submitted by the Additional Basic Shiksha Adhikari Block Gadraul on 12.6.2006 have given categorical findings that Smt. Pramila (Petitioner) is a married lady and she is not the resident of Gram Gadraul where the primary school is situated so she is not entitled for appointment on the post as Shiksha Mitra in question and on the said facts and grounds rejected the representation of the Petitioner by order dated 8.7.2006 so there is neither any illegality nor infirmity in the impugned order and the same is based on categorical findings of fact.

14. It is well settled law that while exercising the power of judicial review in exercise of the extra ordinary jurisdiction under Article 226 of the Constitution of India, this Court is not supposed to interfere with the findings of the facts arrived

at by the authorities below unless and until this Court concludes that such findings of fact are either perverse or based on no evidence.

15. In the case of Syed Yakoob Vs. K.S. Radhakrishnan and Others, the Supreme Court has held as follows:

finding of fact cannot be challenged in a proceeding on the ground that the relevant and material evidence was insufficient to sustain the finding and that adequate or sufficiency of evidence or an inference of fact to be drawn from the evidence or finding of fact are entirely within the jurisdiction of the Tribunal.

16. In the case of State of West Bengal Vs. Atul Krishna Shaw and Another, the Supreme Court has observed that if quasi judicial Tribunal had appreciated the evidence on record and recorded the findings of fact, those findings of fact would be binding on the High Court. By the process of Judicial review, the High Court cannot appreciate the evidence and record its own findings of fact.

17. In the case of State of U.P. and Another Vs. Man Mohan Nath Sinha and Another, the Hon''ble Supreme Court has held that:

The High Court in the present case assessed the entire evidence and came to its own conclusion. The High Court was not justified to do so. Apart from the aspect that the High Court does not correct a finding of fact on the ground that the evidence is not sufficient or adequate, the evidence in the present case which was considered by the Tribunal cannot be scanned by the High Court to justify the conclusion that there is no evidence which would justify the finding of the Tribunal that the Respondent did not make the journey. The Tribunal gave reasons for its conclusions. It is not possible for the High Court to say that no reasonable person could have arrived at these conclusions. The High Court reviewed the evidence, reassessed the evidence and then rejected the evidence as no evidence. That is precisely what the High Court in exercising jurisdiction to issue a writ of certiorari should not do.

18. In the instant case , learned Counsel for the Petitioner failed to point out that the order dated 8.7.2006 passed by the District Magistrate , Shahjahanpur (Respondent No. 2) in what manner and circumstances, is contrary to the facts and perverse in nature.

19. Further in view of the above said fact and as per the admitted position of the present case , the Petitioner is married with one Harish Chandra son of Sri Tilak Ram resident of Mohalla Ekanjai (Gadiyana) Jalal Nagar Police Station Sadar Bazar , Shahjahanpur District Shahjahanpur on 25.5.2003 and till date the marriage is still intact and no divorce has taken place so the Petitioner is not entitled for any relief as claimed by her in the present writ petition.

20. For the forgoing reasons, the present writ petition lacks merits and is accordingly dismissed.

21. No order as to costs.